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ABSTRACT

This report is based on background research and a community forum held in September 1990 in St. Paul, Minnesota, and addresses issues related to equal education for American Indians in Minnesota public schools. Minnesota's Native American population is increasing, is younger than non-Indian Minnesotans, and is becoming more urban than rural. The dropout rate is higher for urban Indians than for rural Indians, and the educational attainment of American Indians still lags behind that of the total population. Most of the report consists of summaries of presentations at the forum from individuals, agencies, educators, state government officials, tribal government officials, and superintendents of school districts. Of central concern was the question of whether equal opportunity in public education means simply equal access to education, or whether it includes the certainty of equal attainment. Some participants called for Indian-controlled separate schools or a separate district to educate American Indian students; others pointed to successful programs within public schools, such as cultural enrichment programs and Native language programs. Chartered schools and magnet schools were recommended as expanding parental choice and providing a means to focus the curriculum on American Indian culture and values. Many participants agreed that however Indians are educated, there must be parental involvement. The appendix is a policy brief presenting policy and legal arguments for separate and for integrated Indian schools. (TD)

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Educational Opportunities for American Indians in Minneapolis and St. Paul Public Schools

Minnesota Advisory Committee
to the United States Commission
on Civil rights

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July 1992

A report of the Minnesota Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission and the Commission will make public its reaction.

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Educational Opportunities for American Indians in Minneapolis and St. Paul Public Schools

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Letter of Transmittal

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The Minnesota Advisory Committee submits this report, *Equal Educational Opportunities for American Indians in Minneapolis and St. Paul Public Schools*, as part of its responsibility to advise the Commission on civil rights issues within the State. The Advisory Committee's report is based on background research and a community forum held in September 1990.

The Advisory Committee's consideration of American Indian education in Minneapolis and St. Paul brought to the surface some issues long churning in educational circles. In several instances, issues reflecting competing and irreconcilable points of view were raised. The precise legal boundaries of equal opportunity in public education were a central concern. Does equal opportunity mean equal access to educational opportunities irrespective of race, or does it also include the certainty of equal results or educational attainment?

It was noted by some of the participants that the present system of public education in Minneapolis and St. Paul has not stemmed the tide of high dropout rates, low achievement levels, anti-Indian attitudes, and insensitive curriculum. Thus, some participants called for separate schools or a separate district to educate American Indian students.

Other participants pointed to successful models within the public schools to meet special needs of American Indians. The Advisory Committee takes note of the programs underway in Minneapolis and St. Paul. These include cultural enrichment programs, native language programs, and the implementation of American Indian magnet schools.

The Advisory Committee recognizes the importance of the many concerns raised in this report. There must be continued dialogue between the American Indian community and educators.

Although the report does not reflect an exhaustive analysis of the subject, the Committee hopes the Commission will find it of value in monitoring equal educational opportunities.

Respectfully,

Mary E. Ryland

Mary E. Ryland, *Chairperson*
Minnesota Advisory Committee

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1. Introduction

In September 1990, the Minnesota Advisory Committee to the United States Commission on Civil Rights traveled to St. Paul, Minnesota, to conduct a community forum. The purpose was to gather information on equal educational opportunities for American Indians in Minnesota public schools, with emphasis on Minneapolis and St. Paul. The Advisory Committee received information from many different persons covering a wide variety of viewpoints.

The Committee's consideration of Indian education in Minnesota brought to the surface some issues long churning in educational circles. In several instances, issues reflecting competing and irreconcilable points of view were raised. The precise legal boundaries of equal opportunity in public education were a central concern. Does equal opportunity mean equal access to educational opportunities irrespective of race, or does it also include the certainty of equal results or educational attainment?

The Committee was also presented with information on control of public education for Indian children. Should Indian education be controlled by Federal, State, or tribal officials, by Indian parents themselves, or by a combination thereof?

The Committee's forum raised thorny issues surrounding the issue of segregating public schools on the basis of ethnicity.[1] There is a growing trend in education toward assuring educational results, and the Committee has received information showing that segregation of Indian children would produce positive rather than negative results.

Since the Supreme Court's decision in *Brown v. Board of Education,* however, the prevailing wisdom has been exactly the opposite: racial segregation in public schools "has a detrimental effect" upon children.[2] Now that wisdom is being challenged. Aware of experiments with all-black, all-male schools elsewhere as a way to assure positive educational results, the Committee was particularly interested in an analogue for Indian education. The importance of curricular diversity to American Indians and the historical problems associated with cultural assimilation through Federal control of Indian schools were also addressed in the presentations made to the Advisory Committee.

The community forum and the Committee's background research raised important issues and concerns for equal opportunity in education generally and for Indian education specifically. Although the Committee could not address every concern, the following summary report does focus on the pivotal issues affecting civil rights and equal opportunity for Indian children in selected Minnesota public school districts.

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1 Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Transcript of Proceedings, Equal Educational Opportunities in Minnesota: Alternative Education for American Indians, St. Paul, Minn., Sept. 6, 1990, p. 20 (hereafter cited as *Transcript*).

2 347 U.S. 483 (1954).

2. Background

The ideas of a separate school district for American Indians and of chartered schools appear to be new to Minnesota. The Citizens League in Minneapolis issued a report on chartered schools in November 1988. In part, the report states:

A chartered school is one granted a "charter" by either a school district or the State to be different in the way it delivers education, and within broad guidelines, to be autonomous. It need not be a school building. It may result in several schools in one building. It is the *process* of schooling and not the building itself that will differentiate a chartered school from a conventional one.[1]

In 1969 a Special U.S. Senate Subcommittee on Indian Education made this central finding:

Ever since the policy of educating Indians in public schools was adopted, it was assumed that the public schools with their integrated settings were the best means of educating Indians. The Subcommittee's public school findings—high dropout rates, low achievement levels, anti-Indian attitudes, insensitive curriculum—raised serious doubts as to the validity of that assumption.[2]

Native American school-age children are the original "at risk" Americans. They have the highest dropout rates of any racial or ethnic group in the United States. In school, Native Americans stand a greater likelihood of being labeled handicapped or learning disabled. Native American children are also more likely to have parents who are not formally educated or to come from environments in which formal education is not highly valued.[3]

According to the Indian School Council report, Minnesota's Native American population is increasing, younger than non-Indian Minnesotans, and becoming more urban than rural.[4] The American Indian population in Minnesota increased by more than 42 percent, from 35,016 in 1980 to 49,909 in 1990.[5]

The number of American Indians in urban areas increased from 1970 to 1980. In 1980, 58 percent lived in urban areas. Nearly 45 percent of the Indian population lived in the Twin Cities seven-county area.[6]

Overall, the educational attainment of American Indians improved from 1970 to 1980 but still lagged behind the total population. The disparity in educational attainment between American Indians and whites is still significant. While 24.5 percent of whites 24-25 years of age had completed college, only 5.9 percent of comparably aged American Indians had.

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1 *Chartered Schools: Choices for Educators and Quality for All Students* (Nov. 17, 1988), p. i. The report also notes that:

The chartered school concept recognizes that different children learn in different ways and at different speeds, and teachers and schools should adapt to children's needs rather than requiring children to adapt to the standard system.

A chartered school is a public school and would serve all children. Students would be integrated by ability level and race. Chartered schools could not select only the best and the brightest students or the easiest to teach.

Although chartered schools would have a freedom to pursue different educational routes, they would be operated by licensed educators, would meet accreditation standards, and would meet desegregation rules.

Ibid., pp. i-ii.

2 1969 Report of the Committee on Labor and Public Welfare, Special Subcommittee on Indian Education, U.S. Sen. Res. 501, 91st Cong., 1st Sess. (Washington, D.C., 1969).

3 *Education Week*, Special Report, "Stuck in the Horizon," Aug. 2, 1989, p. 2.

4 Indian School Council, *Our Children, Our Future*, Presentation to the State of Minnesota 1989 Legislature (Feb. 1, 1989), p. 1 (hereafter cited as *Indian School Council*).

5 1990 Census of Minnesota by Race and Hispanic Origin, *U.S. Department of Commerce News*, CB 91-73 (February 1991).

6 *Indian School Council*, p. 1 (see tables 2.1, 2.2, and 2.3 for 1990 census data).

TABLE 2.1
Population Distribution for Minnesota by Race and Hispanic Origin, 1990 and 1980

	1990		1980		Number	Percent
	Number	Percent	Number	Percent	Change	Change
Total	4,375,099	100.0	4,075,970	100.0	299,129	7.3
White	4,130,395	94.4	3,935,770	96.6	194,625	4.9
Black	94,944	2.2	53,344	1.3	41,600	78.0
Eskimo or Aleut	49,909	1.1	35,016	0.9	14,893	42.5
Asian or Pacific Islander	77,886	1.8	26,536*	0.7	51,350	193.5
Other race	21,965	0.5	25,304	0.6	-3,339	-13.2
Hispanic origin**	53,884	1.2	32,123	0.8	21,761	67.7

*This 1980 number, based on 100-percent tabulations, includes all groups listed separately in the race question. Write-in responses for groups such as Cambodian, Thai, Laotian, and Fiji Islander were not included in 100-percent totals for the Asian or Pacific Islander population but were included in the Asian or Pacific Islander total in all sample tabulations.

**Persons of Hispanic origin can be of any race.

Source: U.S. Department of Commerce News, CB 91-73 (February 1991).

Ninety-one percent of whites aged 25 to 44 had graduated from high school, but only 66 percent of Indians in the same age group.

High dropout rates are among the major factors affecting the educational status of American Indians in the Nation as well as in Minnesota.[7] In 1986-87 the urban Indian average dropout rate, for students in grades 7-12, was 19 percent, with 11th grade having the highest dropout rate (46 percent) followed by 12th grade (41 percent) and 10th grade (36 percent).[8]

From 1984 to 1987, the dropout rate for American Indian students, both male and female, in the three largest urban school districts (Minneapolis, Duluth, and St. Paul) was consistently higher than the dropout rates for Indians in the rural school districts. Overall, urban Indians averaged a 20 percent dropout rate compared to 4 percent for rural Indians.[9]

Recent annual achievement test scores of American Indians and white students were compared by grade level. In the three largest Minnesota urban school districts, American Indian students are below the national median or have higher failure rates than white students.[10]

7 Ibid., pp. 56-68.

8 Ibid.

9 Ibid.

10 Ibid.

TABLE 2.2
Population Distribution for the Ten Largest Incorporated Places in Minnesota by Race and Hispanic Origin, 1990

Population rank	Place	Total population	White	Black	American Indian, Eskimo, or Aleut	Asian or Pacific Islander	Other race	Hispanic origin*
1	Minneapolis	368,383	283,967	47,948	12,355	15,723	3,410	4,960
2	St. Paul	272,235	223,947	20,947	3,647	19,197	5,311	11,476
3	Bloomington	86,335	81,766	1,394	248	2,669	248	805
4	Duluth	85,493	81,980	747	1,837	768	161	510
5	Rochester	70,745	66,650	728	214	2,926	227	822
6	Brooklyn Park	56,381	51,079	2,785	348	1,916	253	650
7	Coon Rapids	52,978	51,566	255	425	575	153	496
8	Butterville	51,288	48,619	1,163	168	1,169	169	529
9	Plymouth	50,889	48,682	821	185	1,040	161	518
10	St. Cloud	48,812	47,270	472	283	657	130	237

*Persons of Hispanic origin can be of any race.

Source: U.S. Department of Commerce News, CB 91-73 (February 1991).

TABLE 2.3
Population Distribution for the Ten Largest Counties in Minnesota by Race and Hispanic Origin, 1990

Population rank	Place	Total population	White	Black	American Indian, Eskimo, or Aleut	Asian or Pacific Islander	Other race	Hispanic origin*
1	Hennepin	1,032,431	922,321	60,114	14,912	29,588	5,496	13,975
2	Ramsey	485,765	427,677	22,674	4,509	24,792	6,113	13,890
3	Dakota	275,227	264,856	3,411	893	4,643	1,426	4,025
4	Anoka	243,641	236,791	1,289	1,865	2,934	762	2,269
5	St. Louis	198,213	192,053	1,106	3,682	1,076	296	952
6	Washington	145,896	141,266	1,601	687	1,648	694	1,895
7	Stearre	118,791	117,061	414	306	838	172	512
8	Olmsted	106,470	101,880	788	295	3,237	270	970
9	Wright	68,710	68,035	74	233	277	91	284
10	Scott	57,846	56,583	267	362	534	100	407

*Persons of Hispanic origin can be of any race.

Source: U.S. Department of Commerce News, CB 91-73 (February 1991).

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3. Summary of Presentations

The Committee received information from individuals, agencies, educators, State government officials, tribal government officials, elected and appointed officials, and superintendents of school districts. The presentations covered chartered schools, State multicultural initiatives, desegregation plans, and the problems of American Indian education in Minnesota.

Leroy J. Machulda, Commissioner of Education, Mille Lacs Band of Chippewa Indians

Mr. Machulda spent 33 years as a public school administrator in Minnesota before assuming his duties as Commissioner of Education for the Mille Lacs Band. He told the Advisory Committee of his experiences as an elementary school principal at a majority-white school from 1977 to 1986. In spite of efforts made by staff at the school, many Indian students dropped out. The same was happening at Onamia High School where over 95 percent of the Indian students dropped out. Due to the high dropout rate and few attempts to make adjustments for Indian students, they staged a walkout. As a result, Nay Ah Shing High School was established on the Mille Lacs Reservation.[1] Mr. Machulda told the Committee that because of the high school's success in meeting the needs of Indian students, plans are now underway to expand the school to all grades.[2]

In reviewing the success of Nay Ah Shing High School, Mr. Machulda said that instead of a 95 percent dropout rate, the high school is graduating 95 to 100 percent of its students.[3] He attributes this result to the school being geared to the student population. He said that most public schools are middle class and that Indians who come from very low socioeconomic conditions feel completely out of place in middle-class institutions. Nay Ah Shing High School places a special emphasis on Indian tradition.[4]

Mr. Machulda presented the Advisory Committee with the Mille Lacs Band's proposal for the establishment of an Indian-controlled school in the Twin Cities area. The tribal government would substantially control such a school, with funding from the State and Federal governments.

In creating such a school, the State would have to deal with the tribe on a government-to-government basis.[5] The State could not require the tribe to give up any sovereignty, according to Mr. Machulda, and would have to be careful not to assume a trust relationship in scope similar to that existing between the Federal Government and Indian tribes.[6]

Underachievement, high absenteeism, over-age students, and a high dropout rate characterize the urban Indian educational community.[7] Mr. Machulda believed that these problems were systemic and could be best solved by an Indian-controlled public school. Only such a school could create an atmosphere of pride in and recognition of Indian culture.[8] Such schools would follow the State's curriculum guidelines generally, but would also be free to teach more Indian-related classes. Mr. Machulda pointed out that this would help Indian children fit into both worlds.[9]

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1 Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Transcript of Proceedings, Equal Educational Opportunities in Minnesota: Alternative Education for American Indians, St. Paul, Minn., Sept. 6, 1990, pp. 8-9 (hereafter cited as *Transcript*).

2 Ibid., p. 9.

3 Ibid.

4 Ibid., pp. 13-14.

5 *Transcript*, p. 10.

6 Ibid.

7 Ibid., p. 8.

8 Ibid., p. 17.

9 Ibid., p. 25.

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When asked to address the question of separate schools for Indians to give them equal treatment, Mr. Machulda responded that separate schools must be characterized as a political, not as a racial issue.[10] He stated further:

> I think once the Indian people are educated, and raise their aspirations and understanding, perhaps there will come a time when they can become more a part of the society. But at the present time, due to the history of this country, I think it is best now to educate Indian students separately.
>
> When I first came to Onamia, that would have been the opposite of what I would have believed. But after working for the last 14 or 15 years, I have come to understand that they [Indians] do have unique problems which are better solved in their own schools.[11]

Lisa Larson, Attorney and Legislative Analyst, Research Department, Minnesota House of Representatives

Ms. Larson currently serves as counsel to the Minnesota House Education Committee and in that capacity spoke to the Advisory Committee. She outlined policy considerations and legal arguments, pro and con, with respect to a separate Indian school.

First, Ms. Larson presented the policy arguments for and against integrating Indian children into the public school system. Historically, public schools that white students attended had better curriculum, teachers, and resources. Children in these schools achieved more academically and were better prepared "to function successfully in a multiracial society."[12]

In contrast, separate schools may remedy the high dropout and suspension rates, poor performance, and behavior problems among Indian students. In urban areas, a separate school may offer Indian students a more comfortable learning environment and instill a sense of identity and tradition. A separate school may also increase parental involvement and community support.[13]

Second, Ms. Larson discussed the legal arguments for and against integrating Indian students with others. The State lacks jurisdiction to assume a trust relationship over Indians that is the same or similar to that of the Federal Government. Absent trust jurisdiction, the State is bound by the equal protection clause of the U.S. Constitution, which prohibits segregation on the basis of race unless the State has a compelling reason for treating Indian children differently.[14]

The legal argument for separate schools suggests that the trust relationship is very broad. Where a Federal statute exists that aids Indians in some manner and the State is also competent to legislate in that area, then the State may exercise a limited trust responsibility toward Indians. As long as the trust relationship benefits the interest of Indians and is not pretextual, the State's action is regarded as bestowing a benefit based on a political rather than racial classification.[15]

Included in the discussion about the advantages and disadvantages of a separate school or school district for Indians and whether educating Indian students involves a racial or political classification, Ms. Larson reported, are some fundamental problems that need to be addressed, including:

1. Indian traditions, values, culture, and language are markedly different from the dominant culture. Recognizing the multiple value systems of Indians is an important step in obtaining the support of Indian parents' involvement in any kind of school.

2. Indian children face poverty and limited parental support for education. Indian families oftentimes lack the ability to influence school board elections and make the school system more responsive to Indian students' needs.

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10 Ibid., p. 21.

11 Ibid.

12 Ibid., p. 30.

13 Ibid., p. 31.

14 Ibid., pp. 34, 45.

15 Ibid., pp. 35-36. (See also appendix A.)

3. Many Indian parents are dissatisfied with the school curriculum and children's lack of exposure to Indian history and culture.

4. Many Indian parents are dissatisfied with textbooks that perpetuate Indian stereotypes and a shortage of Indian school personnel.[16]

Curtis Johnson, Citizens League

Mr. Johnson is the executive director of the Citizens League, a public policy research organization that specializes in involving citizens in public issues. Mr. Johnson discussed the chartered school initiative and its relationship to the conditions of American Indian education. He chronicled the development of the choice initiative in Minnesota—a State law that empowers parents to "choose the school that most nearly fits their individual needs."[17]

According to Mr. Johnson, being able to choose which school to attend is not much of a choice if the options are limited. Chartered schools are one way that the choice of schools can be increased. A chartered school is established by applying for public funding and permission to begin a school open to the public generally. The schools are relatively autonomous and highly responsive to the ultimate educational consumer—parents and their children.[18]

A chartered school would be more flexible and therefore capable of producing better academic achievement. Indian parents or groups could use the chartered school concept, Mr. Johnson said, to create a public school geared to the needs and conditions affecting Indian education. The school chartering process, however, would not be limited to any one group but would be open to all on equal terms.[19]

Mr. Johnson told the Advisory Committee that desegregation of public schools has been billed as providing access to better schools. However, he questioned the concept of desegregation over quality. "Did anything different happen inside the walls? Was the long bus ride worth it?"[20] His concern was that if the quality of education was not adequate, then we should be prepared to do whatever it takes to increase the quality of education. Mr. Johnson said that it is time to be more flexible with our public policy and exhibit some political courage in doing so.[21]

Mr. Johnson went on to relate that he is concerned that many white students have very little exposure to anybody with a different perspective. They emerge from their schools somewhat culturally handicapped. He argued that students, of whatever race, benefit from exposure to others from different groups, and this aids in confronting differences, resolving them, and building relationships.[22]

Eleanor Weber, School Board Member, St. Paul School District

Ms. Weber has served on the St. Paul School Board continuously since 1974. She contributed to the Advisory Committee's understanding of St. Paul's desegregation plan, its relationship to the status of American Indian students, and the proposal for an American Indian magnet school.

She said that 26 of the district's 40 elementary schools have 10 or more American Indians. The school district consciously intends to "preserve and present the unique political, cultural, and spiritual values of Indian people through education with a positive cultural and personal identity."[23] The parents adopted these goals through the Indian Parental Advisory Committee.[24] Magnet schools are one of the more effective means of achieving these goals.

The effect of these developments on American Indian students has been hopeful. The number of American Indians graduating in 1990 "represented 75 percent of those who were in 9th grade 4 years

16 Ibid., pp. 36-37.
17 Ibid., p. 49.
18 Ibid., pp. 49-50.
19 Ibid., pp. 50-56.
20 Ibid., pp. 52-53.
21 Ibid., p. 53.
22 Ibid., p. 56.
23 Ibid., p. 138.
24 Minn. Stat. Ann. §126.51 (West 1992).

ago—an increase of 100 percent from the preceding year."[25] These results, however, are still below the district average, and Indian students still test disproportionately into special education classes.[26]

Parents have expressed concern over the lack of Indian teachers. These parents have also stressed the importance of learning about Indian traditions and culture and how that can contribute to the student's becoming a productive adult.[27]

In the area of special education, 22 percent of Indians enrolled in school were receiving such services. Most were identified as learning disabled.[28]

In response to these problems and concerns, the board authorized an Indian magnet school that would emphasize Indian languages, history, and culture. Difficulty, however, has arisen with qualifying Indian teachers according to the State's certification standards. Desegregation rules also will affect the number of Indian students who attend.[29]

In conclusion, Ms. Weber said that equity in education demands that all students have equal educational opportunities. The public schools must involve the Indian community in developing alternatives that will help Indian students reach their full potential. These alternatives must offer a curriculum that will equip the students for the 21st century.[30]

Mabel Evans Carson, Member, Minnesota State Board of Education

Ms. Carson focused on factors that inhibit the learning process of children, including psychological, social, cultural, ethnic, and economic conditions.[31] She observed that a disproportionate number of children of color are concentrated in special education programs.

She suggested that parents become more involved in education and that the State allow parents to bring along someone who can help them deal with the education establishment when they go in to talk about their children. Ms. Carson said that outreach to parents is essential and that there has "been a put-down of the parent, and they do not understand the educational jargon that is spoken" in meetings.[32]

Albert de Leon, Director, Minnesota Council of Asian-Pacific Minnesotans

Dr. de Leon spoke to the Advisory Committee about his work on certification, recruitment, and retention of teachers of color, which he characterized as a national disgrace. His central thesis was that blacks, Hispanics, Indians, and Asians are denied access to teaching in disproportionate numbers and that future access is not promising even though minority enrollment is on the rise.[33]

The problem, according to Dr. de Leon, is that teacher certification tests are culturally biased and an unreliable tool for determining future success in teaching. He also believes that affirmative action plans for minority teachers should be reviewed by citizen oversight committees dominated and controlled by minorities to overcome the entrenched trends away from minority hiring. Finally, he called for national incentives for minority teacher education and an emphasis on recruiting young minority teachers early in their educational program.[34]

Donald Allery, Chairman, Indian School Council

Mr. Allery is president and CEO of American Indian Associates, Inc. He presented the Committee with a historical overview of Indian education in Minnesota's Red Lake district. Mr. Allery chronicled

25 *Transcript*, p. 142.
26 Ibid.
27 Ibid., pp. 143-44.
28 Ibid.
29 Ibid.
30 Ibid., p. 148.
31 Ibid., p. 169.
32 Ibid., p. 170.
33 Ibid., p. 184.
34 Ibid., p. 186.

how education was undertaken by missionaries and later by the Federal Government through its manual labor schools. These schools were intended to teach manual and agricultural pursuits. He depicted the Federal effort in Indian education as one undertaken with the benefit of the Indian in mind but with contrary results from the standpoint of the Indian and most observers.[35]

Not only did the Federal presence in Indian education not benefit the Indian, but it actually produced a negative effect assimilation of "the Indians as a servile underclass in American society."[36] Mr. Allery stressed that tribal governments need an "informed and knowledgeable populace that recognizes the need for a continuous struggle for survival."[37] He believes that such an objective cannot be accomplished short of a review of the effect of Federal and State policies and laws on Indian children and their educational development.

In response to an Advisory Committee member's question about improving and upgrading the educational level of Native American students in St. Paul and Minneapolis, Mr. Allery called for establishing a separate Indian school district there. That school district should allow tribal and parental participation in its field operation.[38]

John E. Beaulieu, Director, Indian Vision Quest, University of Minnesota

Mr. Beaulieu also serves as chairman of the Indian Education Advisory Committee for the Minneapolis Public Schools. He discussed school desegregation in St. Paul and Minneapolis and said that its overall effect on Indian children has been harmful.[39] Court-ordered desegregation produced a drastic effect on Indian children because it tended to scatter them throughout the county. The individual effect of this tendency was to produce low self-esteem and undercut pride in Indian identity.[40]

Mr. Beaulieu told the Advisory Committee that the effect of desegregation is no different from Federal efforts to assimilate Indians.[41] Parents have not been empowered to overcome these unsatisfactory effects, and the present system does not appear to favor their input. He said that other educational options must be afforded to Indian parents and children, including magnet school programs and more school choices. Mr. Beaulieu added that Indians are tribal people and that:

> Successful Indian education programs affirm tribal membership and use group approaches and cultural relevant curriculum to help any [Indian] student survive the gauntlet of the majority educational system.
>
> Historically, to isolate and ostracize a member from their tribe in a hostile environment was to sentence that person to certain death. Currently, to isolate an Indian student in a hostile environment of the public school system, without the support of the group, and a respect for their cultural differences, is to sentence that student to certain failure in school and a future without hope.
>
> Because of the tribal nature of Indian students, they need to be gathered together to survive in a non-Indian system, in an Indian school that would help counteract discriminatory effects of desegregation toward Indians.
>
> After all, what is the value of espousing the value of diversity integration, if the result is that there are few, or no Indians left to contribute to that diversity in the senior year of high school.[42]

David Beaulieu, Director, Indian Education Section, Minnesota Department of Education

Dr. Beaulieu concentrated his presentation on the effect of equal educational opportunity on American Indians. He regards educational opportunity as resulting in the education of Indians not to be Indi-

35 Ibid., p. 195.
36 Ibid., p. 196.
37 Ibid., p. 200.
38 Ibid., p. 208.
39 Ibid., p. 212.
40 Ibid., p. 214.
41 Ibid., p. 218.
42 Ibid., pp. 222-23.

ans.[43] He does not fault the State's definition of equal educational opportunity with this result. He points to lack of consistent application of that definition.

Dr. Beaulieu said that the State defines equal educational opportunity as "provision of educational processes where each child of school age residing within a school district has equal access to the educational programs of the district essential to his needs and abilities regardless of racial or socioeconomic background."[44] The problem for American Indians, according to Dr. Beaulieu, is that the phrase "essential to his needs and abilities regardless of racial" background has never adequately translated into education policy.[45] He noted that an education policy that does not recognize the unique heritage, needs, and abilities of the American Indian is a flawed policy.[46]

Dr. Beaulieu told the Advisory Committee that school officials should rethink the effects of school desegregation on Indian students. Options should be created that are real options for American Indian students. These options can include Indian schools, within a school district, and special programs that make sense to the education of Indian students.[47] Currently, desegregation is a policy of assimilation, "and it does not seek to meet the unique social and cultural needs of Indian people as Indian people."[48]

David A. Bennett, Superintendent, St. Paul School District No. 625

Dr. Bennett reported that the St. Paul Independent School District, as of September 1990, enrolled 850 American Indian students or approximately 2.5 percent of the total student population. He pointed out that American Indian students have twice the dropout rate (26.7 percent) of students as a whole in the St. Paul public schools. Dr. Bennett noted that the St. Paul public schools offer additional support services to American Indian students, including cultural enrichment programs, alcohol and drug prevention programs, and integration of American Indian history in all grades.[49] He further noted that the school board approved the opening of an American Indian magnet program for the 1991-92 school year.[50]

Dr. Bennett discussed many other issues but perhaps most significantly the relationship between integrated education and a separate Indian school district. He believed that the St. Paul School District can be successful in meeting both the special needs of American Indian students and the expectations of State desegregation guidelines.[51]

Robert J. Ferrera, Superintendent, Minneapolis Special School District No. 1

Dr. Ferrera reported that in September 1990, 3,100 American Indians were enrolled in Minneapolis public schools, 7.6 percent of the total district enrollment.[52] Beginning in the fall of 1989, he noted, the school district offered American Indian programs at the schools with the highest American Indian enrollments: Anderson School and South High School. These programs offered native languages, Ojibwa at Anderson and Lakota/Dakota at South. Indian culture classes, involvement of elders, and an emphasis on parental involvement are common to both programs.[53]

Dr. Ferrera also reported the Minneapolis Board of Education had made a commitment to open another Indian-concentrated school in fall 1991. The

43 Ibid., p. 232.
44 Ibid., p. 233.
45 Ibid.
46 Ibid., p. 239.
47 Ibid., p. 241.
48 Ibid., p. 242.
49 Ibid.
50 Ibid.
51 Ibid., p. 272.
52 Ibid., p. 287.
53 Ibid., pp. 287-88.

school will feature a cooperative planning effort with the Indian Health Board and the development of a comprehensive program of services to Indian children and their families.[54]

Dr. Ferrera followed up on a theme touched upon by Dr. Bennett. Dr. Ferrera spoke about implementation of the State's curriculum that recognizes cultural diversity, gender equity, and disability sensitivity.[55] Efforts to implement the curriculum through training of personnel, dissemination of materials, and proper funding mechanisms are in place. He noted, however, that: "To have a group of one background developing a culture-specific curriculum for another is. . .a guarantee that the curriculum will stay on the shelf and never become part of a staff development program or enter into the classroom or enter into any child's life."[56]

Bob Wedl, Deputy Commissioner of Education, Minnesota Department of Education

Mr. Wedl represented Commissioner Tom Nelson who was unavoidably called away on official business. Mr. Wedl focused on many of the State's programs intended to secure quality education for all learners. He noted that Minnesota has taken the lead in educational reform and introduced a wide variety of programs and schools to achieve its objectives.

Of particular interest to Indian parents was the State's adoption of magnet schools as well as designation of certain school as Indian target schools, "which include Indian language and cultural programs."[57] Moreover, the Minnesota Indian School Equalization Program[58] equalized Federal dollars and was intended to bring funding levels up to the per pupil State aid amount. Of interest to all persons was Minnesota's Alternative Teacher Licensure law,[59] which is self-descriptive. Mr. Wedl also favored the chartered school movement, but he stressed that such schools would have to be scrutinized very closely if established beyond the control of the State or if they resulted in impermissible segregation.[60]

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54 Ibid., p. 288.

55 Ibid., p. 283.

56 Ibid., p. 298.

57 Ibid., p. 306.

58 See Minn. Stat. Ann. §124.86 (West 1992).

59 *Id.* at §126.44.

60 *Transcript*, p. 312.

4. Summary and Conclusion

Over the course of a day-long community forum on equal educational opportunities for American Indians in Minneapolis and St. Paul, the Advisory Committee received many recommendations. The present system of public education in those two cities has not stemmed the tide of high dropout rates, low achievement levels, anti-Indian attitudes, and insensitive curriculum, and some participants called for separate schools or a separate district to educate American Indian students. There was some discussion about the constitutionality of this recommendation.

Other participants pointed to successful models within the public school system to meet the special needs of American Indian students. The Advisory Committee takes note of the programs underway in Minneapolis and St. Paul. These include cultural enrichment programs, alcohol and drug abuse prevention programs, native language programs, and the implementation of American Indian magnet schools. Many of the participants agreed that whatever program is undertaken to meet the needs of American Indian students, there must be parental involvement.

The Advisory Committee recognizes the importance of the many concerns raised in this report. There must be continued dialogue between the American Indian community and educators. There must also be a constant evaluation of those programs and services that are in place in the public schools to address the special needs of American Indian students. Finally, the Advisory Committee recognizes that equal educational opportunities must be afforded to all children so that these children can realize their full potential.

Appendix

HOUSE RESEARCH

Policy Brief

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296-8036

Native American Education
Separate or Integrated?

The courts have for many years applied pressure on local school districts like the Minneapolis district to reduce concentrations of minority children, including Native Americans, in the schools.[1] This policy brief looks at the issue of creating separate elementary or secondary schools for Native American children. It presents pro and con arguments for the major policy and legal questions involved.

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Policy Arguments 2

Proponents of separation argue that separate Indian schools, or a high concentration of Native American children in one or a limited number of schools, best meets the educational needs of Native American children. Opponents argue that the children can be educated better in an integrated school system.

Legal Arguments 4

Opponents of separation argue that states cannot discriminate to favor Native Americans through separate schools without violating equal protection standards. Proponents argue that Congress' special constitutional relationship with Native Americans enables states to establish separate schools to benefit Indians.

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Policy Arguments for Integrated Schools

Quality of Education

Racial segregation in schools produces an inferior educational experience for minority students.

Historically, white schools have more resources, better qualified teachers, and superior curricula. Also, many experts argue that the social class composition of a child's school affects academic achievement. A school dominated by minority children is more likely to be a school serving a predominantly lower socio-economic class. For these reasons, minority children who attend racially integrated schools attain higher levels of academic achievement than minority children who attend racially segregated schools.

Social Effects

The concentration and racial segregation of minority students can often lead to societal discrimination.

Racially segregated schools deny minority children the necessary preparation for life in a society dominated by whites. A racially integrated school experience teaches children to function successfully in a multi-racial society. Total segregation denies Indian children the opportunity to learn to live successfully in both Indian and non-Indian worlds.

Quality of Education

The state's education system is unsuccessful in reaching many Native American students.[1] This is shown by high dropout and suspension rates, absenteeism, poor school achievement and behavior and learning problems in disproportionate numbers.

The federal Bureau of Indian Affairs (BIA) operated unaccredited and badly run boarding schools originally designed as instruments of assimilation. They were the focus of controversy. BIA schools and other federal programs and policies created Indian mistrust of government sponsored education.

Although many coercive aspects of BIA education are gone, assimilation remains a basic principle of public education. The state's public education system fails to meet the needs of contemporary American Indian students for many reasons:

- Indian traditions, values, culture and language are markedly different from the dominant culture and must be recognized if a school is to obtain the support and involvement of Indian parents.
- Indian parents' can't influence school board elections and make the school system more responsive to Indian students' needs.
- Indians are dissatisfied with school curriculum and children's lack of exposure to Indian history and culture.
- Textbooks perpetuate Indian stereotypes.
- There is a lack of Indian school personnel to provide students with positive Indian role models.
- There is a shortage of certified teachers skilled in Indian languages and knowledgeable about Indian culture. This suggests a lack of respect by the dominant culture for the Indian culture.

Social Effects

Segregation can be beneficial to Indian students and Indian education programs.

There are major benefits to separating or maintaining high concentrations of Native American students in their own schools.

- Indian students feel more comfortable with their peers; for example the segregation on reservations helps give Indian children an identity, a tradition and a heritage.
- Urban Native American children can develop a strong value system, thereby avoiding cultural deprivation and the accompanying problems.
- A school system can concentrate more of its resources on Indian study materials.
- A school system can target Indian programs more effectively.
- There is more parental and community involvement.

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Legal Arguments for Integrated Schools

Preferential Treatment

Unlike Congress, states and school districts cannot discriminate to favor Indians through separate schools.

Federal law favoring Indians singles out for special treatment members of federally recognized tribes who live on or near reservations. The exclusive power of Congress to deal with the special concerns of Indians comes from the Commerce Clause contained in Article I, Section 8, Clause 3 of the U. S. Constitution; Congress is authorized to "regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes."[3] The constitutional provision gives Congress power to regulate commerce with Indian tribes and imposes a federal-tribal relationship marked by broad federal authority over Indian affairs and by special trust obligations[4] that require the federal government to observe strict fiduciary standards in dealing with Indians. Arguably, the principal purpose of the trust relationship is to protect the quasi-sovereign status of Indian tribes as political entities and to promote political self determination.

Neither the state nor a school district enjoys the same constitutional power over Indian affairs that justifies different federal laws governing Indians and non-Indians. Little precedent exists for the ability of states or localities to engage in preferential treatment of urban Native Americans by providing separate Indian schools. Therefore, state laws that treat Indians as a separate and distinct class and that are unrelated to the political status of tribes are invalid. In fact, from the standpoint of Native Americans, it may not be desirable to extend the federal government's authority over Indians to the states, since the government's trust responsibility arguably has become more of a sword for the government than a shield for Indians.

Equal Protection Standards

Laws singling out Indians as a class violate equal protection standards: Any state or federal action directed at Native Americans as a race is subject to strict scrutiny by the courts.

Legislative classifications based upon an innate group characteristic such as race, ancestry or national origin are inherently suspect and are subject to strict scrutiny by courts. For a court to sustain a suspect classification, the state must show that the classification is necessary to serve a compelling state interest. Courts sustain few such classifications. Maintaining, increasing or causing the separation of Native American students in school districts or schools is unrelated to matters of tribal membership or to quasi-sovereign interests of tribal groups or reservations. Consequently, a classification of Native American for purposes of schooling can only be construed to be directed toward a racial group. While meeting the educational needs of Indian children is extremely important, a classification based on race cannot be justified as a compelling state interest if Indian children's needs can be met by means other than promoting segregation.

Preferential Treatment

Like Congress, states and school districts can discriminate to favor Indians through separate schools.

The history of the treatment of Native Americans by Congress justifies interpreting the constitutional relationship between government and Indians as broad and far reaching.

Concurrent state regulatory authority may be permissible in the following circumstances: (1) on reservations where no substantial tribal interest is implicated, (2) where a significant state interest involving off-reservation effects is shown, or (3) where no contrary law or policy exists.

State action for the benefit of Indians can further Congress' unique obligation toward Indians. State action can be protected from challenge under the Equal Protection Clause or civil rights statutes if that state action: (1) does not interfere with tribal government or federal programs; and (2) is rationally related to governmental functions and obligations under the trust doctrine.[5]

This reasoning is supported by recent case law in response to a challenge of the use of federal housing funds by the Minnesota Housing Finance Agency.[6] A federal district court found that an urban housing project open only to Indians fell under the trust doctrine since the trust relationship ranged from protection of treaty rights to the provision of social welfare benefits, and was therefore protected from equal protection challenge. If courts use this analysis to conclude that the federal government's trust relationship with Indian tribes is applicable to the states, states can reasonably pursue the federal policy of Indian self determination in effect since the late 1960's. As long as special treatment on behalf of Native Americans can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, legislative or administrative judgment that an identifiable racial school conferred a benefit on Indian children should not be disturbed.

Equal Protection Standards

Laws singling out Indians as a class do not violate equal protection standards: States may enact protective measures benefitting Indians without violating equal protection guarantees.

There is no constitutional bar to maintaining, increasing or causing the separation of Native American students in school districts or schools if the classification of Native American is "political" rather than "racial" and is intended to benefit Indians.[7] A "benign" classification is subject to lesser judicial scrutiny and requires a less compelling state interest to be substained. Arguably, the "separate is inherently unequal" doctrine contained in Brown v. Board of Education[8] was a response to particular sociological conditions affecting black school children in the 1950's and therefore should not apply to Native American children.

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Endnotes

1. In the only case to directly discuss this issue, a federal district court in Booker v. Special School District No. 1, 351 F. Supp. 799 (D.Minn. 1972), found that the Minneapolis school board, through discretionary decisions, "had acted intentionally to maintain or increase racial segregation in the schools" and ordered the district to implement a desegregation/integration plan. In 1977, the school board asked the court to modify its desegregation order by increasing the number of minority students allowed in any one school and by granting a variance from the district's desegregation plan to permit a high concentration of Native American students in one or a limited number of schools. The court agreed to change the minority population enrollment guidelines but denied the board's request to permit a high concentration of Indian students. The court held that the request, if granted, would "condemn white and Negroes and members of other minority groups to attend public schools. . . devoted primarily to the education of minority students." 585 F. Supp. 347, 354 (1978).

2. A Note on the History of Public Involvement in Native American Education

The Federal Government's Involvement

Experts argue that the federal government's Indian education policy denied Native Americans their cultural heritage and identity. In the late 1800's, about the time the Dawes Severalty Act* fragmented Indian tribal land holdings and caused the break-up of tribal structures, the BIA began operating boarding schools on and off the reservations. Many believed they were badly run. BIA administrators and teachers believed that Indians could choose only between "Indianness" and complete assimilation into the dominant society. Indian children, starting at six, were away from home for their entire elementary school education. They were taught white values. The schools stressed manual training of questionable educational value and used student labor to keep operating costs low. In 1893 Congress made education compulsory for all Native American children.

During the twentieth century, the federal government's policy on Indian education vacillated between recognition and rejection of Indian tribes and communities. At the turn of the century the government's policy consisted of "coercive assimilation." In the 1930's the government started to recognize tribal self government, but in the 1950's the government sought to end tribal governments. In the 1970's the government adopted a policy of Indian self determination. Federal education programs during the 1930's and since the 1970's have tried to make the educational process more functional for Native American students by incorporating Indians' historical and cultural experiences into school curricula. The emphasis remains, however, on integrating Indians' experiences into existing educational structures and objectives.

Minnesota Involvement

Direct federal involvement in the operation and management of Indian schools declined as state involvement increased. In the early 1900's the state's public school system, federal government day and boarding schools, and mission schools shared the responsibility for educating Minnesota's Native American children. By 1928 federal boarding schools were being phased out in Minnesota. In 1936, under a contract between the state and the BIA, the state took primary responsibility for the education of Minnesota's Native American children.

The 1980 census count for Minnesota showed 11,516 Indian students in grades kindergarten through twelve. Experts believe that the 1990 census will show that the Indian student population is growing.

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* The General Allotment Act of 1887 is commonly known as the Dawes Severalty Act. The Allotment Act authorized the President to allot portions of reservation land to individual Indians. The act contained four provisions: (1) an allotment of 160 acres to each family head, 80 acres to each single person over 18 years old and each orphan under 18 years old, and 40 acres to every other single person under 18 years old; (2) a requirement that allotments be held in trust by the federal government for 25 years; (3) a four year period for Indians to select the land allotted them after which the Secretary of the Interior would select the allotments; and (4) citizenship to allottees and other Indians who abandoned their tribes and became "civilized." The act did not require consent of the tribes or Indians affected.

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3. The Treaty Clause (Article II, Section 2, Clause 2) and the Property Clause (Article IV, Section 3, Clause 2) have been considered additional sources of Congress' authority over the affairs of American Indians.

4. See footnote 5 discussing the development of the trust doctrine.

5. In Cherokee Nation v. Georgia, 30. U.S. (5 Pet.) 1 (1831), Chief Justice John Marshall characterized the relationship of Indians to the U.S. as that of "domestic dependent nations" with a right of occupancy of the land until the federal government extinguished their title. Marshall concluded that Indian tribes were "in a state of pupilage" and that "[t]heir relationship to the United States resembled that of a ward to his guardian." That characterization served as a conceptual basis for the evolution of the trust doctrine and defined the required standard of conduct for federal officials and Congress. During the 20th century, the trust principles articulated in Cherokee Nation v. Georgia have been relied upon to establish and protect rights of Indian tribes and individuals.

6. St. Paul Intertribal Housing Board v. Reynolds, 564 F.Supp. 1408 (1983).

7. The political classification derives from the unique status of Indians as a separate people within their own political institutions. Courts tend to uphold special treatment of American Indians in federal laws on the ground that the basis for the discrimination is not race but tribal membership. See also footnote 5.

8. 347 U.S. 483 (1954).